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HEARINGS

W.C.C.M.

BEFORE THE COMMITTEE ON THE
PUBLIC LANDS

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MARCH 3, 1908

ON H. R. 18198

TO PROVIDE FOR THE SALE OF COAL
DEPOSITS IN THE DISTRICT OF ALASKA,
AND FOR OTHER PURPOSES

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THE COMMITTEE ON THE PUBLIC LANDS,
Tuesday, March 3, 1908.

The committee this day met, Hon. Frank W. Mondell in the chair.

The CHAIRMAN. We have before us this morning a bill introduced by Mr. Cale, relating to coal lands in Alaska (H. R. 18198), and although there is not a quorum present I think we may proceed at this time, owing to the fact that Judge Ballinger, very much to our regret and very greatly to our loss, leaves the position of Commissioner of the General Land Office in a couple of days, and as he has given a very great deal of attention to the question of coal lands I thought the committee would like to hear from him before he goes out, on that general subject. I think it is important that we in the near future take this matter up as regards both the coal lands of Alaska and the coal lands of the balance of the public domain and decide, first, whether there shall be a change of law and, second, if there should, what form it should take, and while I am not prepared at this time, of course, to pass on that very large subject, while the Commissioner can be before us it occurred to me that you would all be very glad to have his views both on this bill, which is confined to Alaska by its terms, and on the general subject.

We will proceed with the hearing on the bill (H. R. 18198) introduced by Mr. Cale, to provide for the sale of coal deposits in the district of Alaska, and for other purposes, and we will be very glad to hear from you, Mr. Commissioner, in regard to this bill and the general subject, if you care to discuss it.

**STATEMENT OF MR. R. A. BALLINGER, COMMISSIONER GENERAL
LAND OFFICE.**

Mr. BALLINGER. Mr. Chairman and gentlemen, the coal-land act of March 3, 1873, is practically the only law we have to-day authorizing the disposition of coal lands. This law has, in my judgment, for many years ceased to be the kind of an act that is needed by the Government for the disposition of unappropriated coal lands. Since this law was enacted there have been only about 500,000 acres of lands taken under the act of 1873 and millions of acres have passed into private ownership under other methods. I am speaking now of the public-land States, and not in reference to Alaska. The public-land States have still a large area of lignite coals unappropriated, and an area, as I recall it, approximately, like 14,000,000 or 15,000,000 acres of very high-grade coals unappropriated. In Alaska, however, there is a vast region of unappropriated coal deposits, the disposition of which should certainly be under quite a different system than is provided for by the law of 1873, and there have been special acts covering the disposition of the coal lands in Alaska, the variation from the

act of 1873 being substantially, first, in a method of survey of the lands; second, a flat price of \$10 per acre, and a limitation of 160 acres, which I think was probably an inadvertence in the law, making the area to be disposed of in Alaska less than the area that might be obtained under the law of 1873 in the States.

Mr. CRAIG. How much land could be obtained in the States under the law of 1873—320 acres?

Mr. BALLINGER. Three hundred and twenty, or 640 acres if an association invested as much as \$5,000 in improvements, but that seems to be by inadvertence not to have been carried into the Alaska statute.

In my last annual report in reference to this subject I used this language:

This act limits the area to an unreasonably small acreage—

That this, the act of 1873 limiting it to 160 acres to an individual, 320 acres to an association of two or more persons, and 640 acres to an association that may have invested \$5,000 in improvements.

This act limits the area to an unreasonably small acreage, prohibiting the prudent investment of capital in coal-mining operations; hence all kinds of subterfuge has been undertaken to avoid the provisions of the law. In the securing of these lands the unscrupulous have not hesitated to resort to perjury and fraud, carrying their schemes of fraud and corruption to such an extent as to amount to national scandal. Title having passed, the Government possesses no guaranty that as a public utility the coal can be made available to supply the market; on the contrary, these lands have almost uniformly passed into the hands of speculators or large combinations controlling the output or the transportation, so that the consumer is at the mercy of both in the greater portion of the West. The inducements for much of the crime and fraud committed under the present system can be prevented by separating the right to mine from the title in the soil.

The act of March 3, 1873, referred to by Mr. Ballinger is as follows:

COAL-LAND LAWS.

PART I.

TITLE XXXII, CHAPTER SIX.—*Mineral lands and mining resources.*

SEC. 2347. Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land office, have the right to enter, by legal subdivisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre for such lands where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.

SEC. 2348. Any person or association of persons severally qualified, as above provided, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference right of entry, under the preceding section, of the mines so opened and improved: *Provided*, That when any association of not less than four persons, severally qualified as above provided, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements.

SEC. 2349. All claims under the preceding section must be presented to the register of the proper land district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file

at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office; and where the improvements shall have been made prior to the expiration of three months from the third day of March, eighteen hundred and seventy-three, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this section shall be allowed until the expiration of six months from the third day of March, eighteen hundred and seventy-three.

SEC. 2350. The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such sections shall enter or hold any other lands under their provisions; and all persons claiming under section twenty-three hundred and forty-eight shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

SEC. 2351. In case of conflicting claims upon coal-lands where the improvements shall be commenced, after the third day of March, eighteen hundred and seventy-three, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference-right to purchase. And also where improvements have already been made prior to the third day of March, eighteen hundred and seventy-three, division of the land claimed may be made by legal subdivisions, to include, as near as may be, the valuable improvements of the respective parties. The Commissioner of the General Land Office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and the four preceding sections.

SEC. 2352. Nothing in the five preceding sections shall be construed to destroy or impair any rights which may have attached prior to the third day of March, eighteen hundred and seventy-three, or to authorize the sale of lands valuable for mines of gold, silver, or copper.

Mr. BALLINGER. The theory of separating the title of the deposits from the soil and disposing of the coal deposits is one to which I have given a great deal of study, as contradistinguished from the disposition of coal lands by a leasing system, and the reasons which prompted me to consider this matter as more available on the theory of the disposition by sale of deposits rather than by lease of the coal lands are set forth in the following memorandum, which, if you will pardon me, I would like to read:

CONSIDERATIONS FAVORING THE SALE OF COAL DEPOSITS IN PREFERENCE TO THE LEASING THEREOF.

Relative to the comparative methods of the sale of coal deposits in public lands under limitations as against the lease thereof, I am of the following opinion:

That either method will enable the conservation of the remainder of the unappropriated coal in the public domain, as a public utility, and will permit of regulations to prevent combinations in restraint of trade in coal, or restrain the tendency to create monopoly therein.

The advantages of the sale method appear to me to be numerous and controlling, and are substantially as follows:

First. Under a sale of a deposit an owner would not need that supervision that a lessee would necessarily be under in the matter of protecting the mine as against wasteful and ruinous operation. In operation it will be found that a lessee will naturally have an incentive to produce as much coal, with as little expenditure in honest development, as possible, resulting in many cases of robbing the mine—that is, leaving insufficient timbering, pillars, air shafts, etc., to maintain its permanency while the coal is being removed, and the high grade, or more valuable coals, will often be worked out and the low grades left in the mine, resulting in a total loss thereof to the public. Furthermore, upon the termination of a lease or other abandonment, Government mainte-

nance will be necessary in many cases which would not occur under the sale system. Government maintenance would mean retimbering and a continuance of physical improvements to prevent decay and loss of the deposit from fire, caveins, etc. It is true that in case of forfeiture under the sale of the deposits similar maintenance would be necessary except upon a resale, but the cases in which forfeiture would occur under the sale system would be small compared with the abandonments or forfeitures under the leasing system.

Second. The collection of rentals, royalties, or tolls, as the case may be, under a leasing system will necessarily involve the maintenance of a numerous body of Government employees at great expense to the Government and add further expense for a detailed system of accounting. This increased expense involved in the leasing of coal deposits will, of necessity, increase the price of coal to the consumer and will also be a constant menace in administration, as likely to produce, in many instances, public scandal and corrupt practices. These objectionable features would appear to me to be practically removed under a sale of the deposits.

Third. Regulations, under a leasing system, will be likely to trench upon the police power of the States as to mine inspection, supervision, and regulation, where under the sale system there could be little or no conflict.

Fourth. In the operation of a coal mine under a lease from the Federal Government, the lease would necessarily have to be so worded as to protect the Government against liability for negligence on the part of the operator, resulting in loss of life or destruction of property. In case the Government's agents were likewise grossly negligent in enforcing the regulations a grave question is presented whether or not the Government is not at least morally liable.

These considerations of advantage in favor of a direct sale of the coal deposits separate from the land, with sufficient limitations to insure a normal output and to prevent combinations in restraint of trade in coal, satisfy me that the leasing system is not practicable in operation as compared with the other.

A direct sale of the coal deposits is more in harmony with the established public-land policy of the United States and it will doubtless be conceded that the leasing of pasture lands or grazing areas is wholly feasible, while the leasing of mineral deposits, which have to be mined under conditions requiring special inspection and supervision, is not parallel, and that the favoring of the one does not necessarily imply the favoring of the other.

Along this line the bill which is now before your committee provides for a sale of the deposits in the district of Alaska. The first section of this bill provides for the classification of the coal lands in Alaska by declaring "That all vacant surveyed or unsurveyed public lands in the district of Alaska containing workable deposits of coal are hereby classified as coal lands." It provides in the next section the persons who may purchase the deposits, and you will observe in lines 13 and 14 of the bill it provides that in case coal deposits are found under contiguous lands where the entry was not completed and discovery existed prior to the completion of the entry, that the deposit in such cases may also be sold, but where the discovery is not made prior to the completion of the entry the person who secured the land would take it free from any such classification. I wish at that point to call your attention to line 20, page 2, and line 3 on page 4 of the bill, and would suggest that in place of the words "issuance of such patent" that the words "completion of the entry" be inserted, so as to conform to the language in line 2 of page 2. It seems to me the right should terminate on the completion of the entry. The right of taking any coal that may be discovered subsequent to that would be terminated.

The CHAIRMAN. It is not my intention, Mr. Commissioner, to interrupt you in your statement to any extent, but I simply wish to make the suggestion that the provision in that section as to the amount of surface that might be required is a little indefinite and possibly might have to be worked out a little more.

Mr. BALLINGER. It will be found in practice that every case will be different as to the amount of surface that will have to be required for operation purposes. The contour of the ground would materially affect the surface that would be required, and the language of the statute ought to be as specific as possible and yet sufficiently elastic to allow the administrative officers to give all that is necessary.

The CHAIRMAN. In other words, we might make a provision, if we enter upon this plan, that the original application should withdraw the surface until an adjustment of the question of the amount of surface that would be required for the operation?

Mr. BALLINGER. Yes, sir; it says in the latter part of the second section, in the exceptions:

Except the right to such use and occupancy of such surface as may be necessary to the mining and sale of the coal purchased by them, which shall be included in such purchase and fully defined.

The CHAIRMAN. You would suggest that the title to so much surface as may be necessary for those operations should be in fee?

Mr. BALLINGER. No, sir; it would be practically an easement running with the sale of the deposits, and so long as there was any workable deposits of coal upon the land this easement would continue with the right to work out those deposits.

The CHAIRMAN. In practical operation would not that be pretty trying to the operator? Suppose he took 1,000 acres of coal and he needed 160 acres of surface at one point for his main operations, upon which he would have to put very expensive machinery and upon which he would have to build houses for his employees and otherwise improve it at a vast expense, and over which he ought to have exclusive control?

Mr. BALLINGER. He would have exclusive control so long as there was no forfeiture of his right to mine coal in the deposit that existed in the ground.

The CHAIRMAN. But suppose this condition of affairs which often exists in a community after coal operations had ceased. It is a frequent occurrence that a coal operation builds up quite a community and that valuable improvements are placed upon such lands, and oftentimes when the operation ceases, by reason of the growth of the community and the development of the surrounding country, the community, with its churches, schoolhouses, stores, and residences, continues to exist independent of a coal operation, in which event the question would arise as to who would be entitled to those lands upon which such valuable improvements had been made and to which such a variety of rights had attached. It has occurred to me that the grant should not be limited and restricted in the interest of permanent development; that there ought to be an assurance of permanence of title, as the mere working out of a coal vein would throw titles into vast confusion.

Mr. BALLINGER. I would have no objection, as far as I can see, of giving a definite fee simple title to the specific portion of the ground that may be necessary for the development.

Mr. SMITH, of Arizona. What of the subsequent development?

Mr. BALLINGER. The purpose is to grant, in the first instance, as much of the surface of the land under which the deposit lies as will be necessary or convenient to work out that deposit.

Mr. SMITH, of Arizona. Who will consider what is necessary and convenient?

Mr. BALLINGER. That would be decided in each particular case as to the condition of the deposit.

Mr. SMITH, of Arizona. By whom?

Mr. BALLINGER. By the Secretary of the Interior, as provided in this bill. If you are going to separate the deposit from the soil it occurs to me that the safest way is to grant only the easement as you do to railway companies for rights of way and for station houses.

Mr. SMITH, of Arizona. If the committee will bear with me, what is the object of the separation?

Mr. BALLINGER. The object of the separation mainly is to give control as against the monopolization of the deposit and lodge that control in the Secretary of the Interior by such regulations as will prevent the combination and monopolization of the various deposits that may be disposed of. Second, to provide for a development that will not hold the lands purely for speculative purposes. In Alaska it is an important question that these coal deposits be disposed of so that the Government may have a development in those deposits which will secure coal for naval purposes. The best coals we have on the Pacific coast are in Alaska, and the Government should have some supervisory control over the development and disposition of those deposits, so that they will not fall into the hands of large corporations and extortion be demanded in the sale of the coal or the coals withheld from development, and it was along that theory and because of those reasons that the suggestion existed for selling the deposit rather than selling outright the fee simple to the land.

The CHAIRMAN. Might it not be possible, just as a suggestion, that the land and coal be sold together and still retain the control which is suggested in the subsequent paragraphs?

Mr. BALLINGER. It is entirely possible to do so, but, comparing the system in the States, you have a great area in some localities that is underlaid with coal and that is valuable for other purposes—for settlement purposes, for timber, and possibly for other minerals. Now, in Alaska, I understand in some of the regions where the coal deposits lie there are other valuable minerals in the same lands. As a general thing, the precious metals are not found in the same lands under which you find the coal deposits. It is very rare, but I understand it does exist in some localities in Alaska, so that this would provide a method by which the placer deeds could be disposed of through mineral entry, on the one hand, and the sale of coal upon the other, and the two could go on in development without interruption, and the same if it was copper or marble. You will find in the coal deposits valuable deposits of stone or fire clay and other products that are classed as minerals, and the suggestion here is to sell the one thing to the purchaser and to allow him to acquire sufficient land either by easement or otherwise—this bill suggests by easement—sufficient land to enable him to develop the coal and market it. It may be deemed advisable in Alaska, where there are no agricultural lands or no timber upon the lands or no other minerals or valuable products that the Government would want to dispose of in some other way, to sell the land and all.

The CHAIRMAN. The presence of mineral on coal land is an exceedingly rare thing. In all my experience I know of no such case in

the States. As a matter of fact, it is pretty nearly geologically impossible for a coal deposit and a mineral deposit to occur on the same land. The only exception, it seems to me, so far as the metals are concerned, would be the case of a possible placer.

Mr. BALLINGER. So far as other minerals are concerned, fire clay very frequently occurs.

The CHAIRMAN. Yes, sir; any sedimentary mineral might occur but do you think we should attempt separation of titles in the same land to the extent of granting one man the coal, and the limestone to another, and so on?

Mr. SMITH, of California. Do you know whether the agricultural side of the case needs to be considered?

Mr. BALLINGER. I would not think it needed to be considered in Alaska at all. That is my understanding of the nature of the country where these deposits have already been discovered. The Katalla coal field is a rough and broken country, as I understand it, and does not possess any agricultural land within its limits.

Mr. SMITH, of California. Any timber?

Mr. BALLINGER. There is some scant scattering of timber, but not enough to consider it from a commercial standpoint, as I am informed.

The CHAIRMAN. Not even enough to timber the mines?

Mr. BALLINGER. It is enough for that, but not to be considered in any other respect, and for that reason the timber was eliminated.

Mr. SMITH, of California. In considering the subject of the segregation of the coal from other features of the land we can eliminate the agriculture and timber possibilities of the land?

Mr. BALLINGER. So far as Alaska is concerned, I would say yes.

Mr. HALL. Has there been any considerable development of the coal industry in Alaska?

Mr. BALLINGER. There has been no development, except upon one claim, as I understand, by Mr. McDonald, who has taken out a few hundred tons.

The CHAIRMAN. There have been many entries made in Alaska under the present law, that is, a great many declaratory statements have been made.

Mr. BALLINGER. The records of the General Land Office show that 33 coal entries have been made in Alaska, embracing about 5,280 acres, made in the local office for coal lands near the Bering River, in the Katalla district, and from information on file it would appear that a total of about 66,880 acres of coal lands have been located in this district. No other coal entries have been made in Alaska and the General Land Office is without information as to the number of locations which may have been made in various localities.

The CHAIRMAN. Since November, 1906, if I recall rightly—

Mr. BALLINGER. November 12, 1906.

The CHAIRMAN. There has been a withdrawal of all the coal lands in Alaska, so that there has been no opportunity to make or file declaratory statements since that time.

Mr. SMITH, of Arizona. How were those lands withdrawn?

The CHAIRMAN. By a general order.

Mr. SMITH, of Arizona (addressing the chairman). Under what authority of law?

The CHAIRMAN. The chairman knows of no authority of law.

Mr. BALLINGER. Section 3 of the bill introduced by Mr. Cale provides for a method of exploration by which the explorer has a preference during the period first of one year, and then he may extend that period another year by making a small payment.

The CHAIRMAN. That is in section 6?

Mr. BALLINGER. In section 3.

Section 4 provides a method of forfeiture for failing to mine and offer coal for sale through the courts and not by an executive order—by a court proceeding.

The CHAIRMAN. I would like to discuss with you briefly the first provision under which proceedings could be instituted upon the failure of the purchaser to mine and offer for sale quarterly such reasonable amount of coal as shall be prescribed by the Secretary of the Interior. As to that provision it occurs to me that it would be very difficult to work it out in a practical way, owing to the widely differing conditions that surrounded the mining of coal. We all know that in order to have an abundant supply of coal at all times for every possible demand there should be and must be a considerable number of openings and operations and facilities for production above the present uniform and continuous demand. In other words, the coal market is a very uncertain one. It is limited in the summer, in many regions almost ceasing, and it increases largely in the winter, and particularly as to those coals that can not be stored and where summer working can not be carried on for that reason.

Mr. SMITH, of California. That does not apply to Alaska?

The CHAIRMAN. I understand some of the northern Alaska coals are of that nature. Possibly the hard coals in Alaska would not be first worked.

Mr. BALLINGER. There are lignites in Alaska which are subject to disintegration when in the atmosphere.

The CHAIRMAN. The thought which has occurred to me in this connection is this, if we lay upon the mine operator restrictions as to his right or claim or ownership by reason of his failure to mine each quarter a given amount of coal from each entry, the result might be to discourage such large and extensive development as should be had and which ought to be encouraged with a view to supplying every possible demand in the future and with a view of meeting every probable increase in the demand. I am in sympathy with the evident object of the provisions but fear that it might have the effect of limiting rather than increasing output.

Mr. BALLINGER. The purpose of this section, as I think you will see from its language—

The CHAIRMAN (interrupting). I am speaking now only of the first paragraph, relating to the requirement of a given minimum of production.

Mr. BALLINGER. That should be, in my estimate, a very low minimum and it may be fixed definitely as to the mines generally, but the main feature of the section is intended to prevent combinations in restraint of trade in coal.

The CHAIRMAN. Does it occur to you that if we conclude to adopt the second portion of that section as the rule for coal entries, it might be possible to eliminate the first paragraph, with regard to the minimum production, from the section?

Mr. BALLINGER. That could be eliminated. The loss would only be as to the force continuing working or a continued working. Where the parties were required to shut down for some reason it might be explained to the Secretary of the Interior. I grant you, Mr. Chairman, that unless the regulations under such a provision you have called my attention to were made extremely liberal and easy of enforcement it would have a deterrent effect upon anyone taking hold of development. The same is true in regard to the regulations covering the leasing of coal lands where the restrictions are burdensome. The last proviso was put in with the intention of relieving such conditions so that they they would not be burdensome, or, in other words, discourage people from going into coal-mining enterprises. They could only be forfeited for a breach of one or more of the conditions imposed and my idea is that the forfeiture should not be left to an administrative officer, but should be left to the courts.

The CHAIRMAN. As a matter of law, do you think that the provision contained in section 4 is clearly sufficient to indicate the manner and form of proceedings that might be had to enforce a forfeiture under the conditions prescribed?

Mr. BALLINGER. I think so, Mr. Chairman. It should require a proceeding in equity in a court of competent jurisdiction, alleging the grounds of failure or breaches of the contract of purchase with the Government.

Mr. SMITH, of California. What would be the nature of the market for the coal? Will it be exported to the States and be used by the Navy on the Pacific coast?

Mr. BALLINGER. The coal in Alaska?

Mr. SMITH, of California. Yes, sir.

Mr. BALLINGER. The market for the Alaskan coal would be, in the first instance, the States bordering upon the Pacific and the Navy.

Mr. SMITH, of California. Would there be any considerable home consumption, such as we find in the States?

Mr. BALLINGER. Not a great deal, in my estimation. The home consumption for some time to come for the ports of shipment to which demands might come are widely separated in Alaska. Shipments to Nome would not be much more feasible from Valdez than from the ports of Puget Sound on account of the steamship lines.

Mr. SMITH, of California. Are there transportation facilities now to get the coal out?

Mr. BALLINGER. No; not to these mines. They have no railroad into the mines at this time, as I understand.

Mr. SMITH, of California. We must make such disposition of the coal as will encourage the building of a railroad?

Mr. BALLINGER. That is one of the main objects of the entrymen, as I understand it.

Mr. SMITH, of California. Then we may look at the production of coal as a matter of exporting it out of Alaska to the States and to the uses of the Navy on the Pacific.

Mr. BALLINGER. That is the principal object of opening these fields.

Mr. HALL. Approximately how far are these fields from the coast?

Mr. BALLINGER. The Katalla field, I think, is about 25 miles from tidewater.

Mr. SMITH, of California. Are there any cities in the vicinity needing fuel?

Mr. BALLINGER. Not much more fuel than they get from the steamers running back and forth from the States.

Mr. SMITH, of California. Have you considered the advisability of drafting a law applicable to one or two particular localities where we can understand the conditions and not undertake to make the law applicable throughout that vast country?

Mr. BALLINGER. The conditions do not particularly vary in Alaska. It seems to me that any law that you enact should be a law generally applicable to the territory. The Matanuska coal field, which is about 80 miles from the terminus of the Alaska railroad—I think that is about right—is also a very large coal field of a high-grade character of coal, and there is an untold field of vast area of coal up in central Alaska, and whatever legislation is enacted for Alaska should embrace that field and all the other fields, in my estimation.

Mr. SMITH, of California. You think that the same legislation can be applied successfully to all the fields?

Mr. BALLINGER. Yes, sir; absolutely. There are along the coast in certain places shown by the Geological Survey map various coal deposits, and as you will notice by the green marks on this map [exhibiting] they are scattered over various localities of Alaska. Some of those deposits are now-grade lignites which it would not pay to work if you expected to export it.

Mr. SMITH, of California. Do you not think it would be better for us to frame a law applicable only to the better grades of coal and leave the lignite question for consideration in another bill?

Mr. BALLINGER. I would cover the whole thing by one measure and give some elasticity to the price of the coal. For instance, in line 4, instead of fixing the price at \$10, I would say "not less than \$10," but upon the coals already entered or located I would leave the price as it heretofore was, a flat price of \$10 an acre. As to the disposition of the coal areas under future legislation I would leave that elastic so that the higher grades of coal could be sold at a higher rate than \$10 an acre.

Mr. SMITH, of California. I was not referring so much to the price, but the conditions which should be exacted?

Mr. BALLINGER. It would be practically the same thing in any part of Alaska.

The CHAIRMAN. As a matter of fact, with the exception of the question of surveys, which would have to be specially provided for in Alaska, would it, in your opinion, be very difficult to frame legislation that would fit the coal situation generally in the United States, including Alaska, in one measure?

Mr. BALLINGER. The only other consideration that Alaska might claim as different from the States would be the consideration of the extraordinary expense of development in that far-distant Territory, of getting machinery into the interior, because some portions are more accessible than others, but there should be a liberal disposition exercised regarding the development of those fields, perhaps more liberal than in the States, where the places are easily accessible by railroad connection and transportation.

Mr. MCKENZIE. We now have to bear the expense of the survey?

Mr. BALINGER. Yes, sir; the expense of the survey is also imposed upon the entryman in Alaska, but it is not imposed upon the entryman in the States as they take the lands surveyed through the public land survey and enter them according to the legal subdivisions. I would say that outside of that it has always been my belief that the laws generally applicable to coal deposits in the States should be made applicable to Alaska; that is, any new legislation that might be enacted, it seems to me should be enacted broad enough to cover the coal deposits in the States as well as in Alaska, with the exception that the lands in Alaska have to be surveyed by the entryman or by the locator at his own expense, as has been stated, which is an additional disadvantage that the people are laboring under in going into that country.

The CHAIRMAN. And that should be taken into consideration in considering the question of the price of the land?

Mr. BALLINGER. I would compensate that in some satisfactory way. As to the matter of the price, I can see no reason why the deposits should not be handled in Alaska and in the States along the same method as to their disposition.

The bill in conclusion provides in the seventh section that the locator may mine coal from the time of his location under regulations which the Secretary of the Interior may impose, the idea being that the Secretary may grant to locators permits to immediately proceed to develop and mine coal so that the coal measures may become available without delay.

So far as the uses of the Navy are concerned and the demand for coal upon the Pacific coast, the last section of the bill provides for a consolidation of existing entries and does not call for the proof of good faith of the original entry or location. There are a great many charges pending against some of the original entries in Alaska. At the time these fields were located corporations were organized. The men had really no method of taking advantage of these coal measures. It resulted in their getting involved in conditions which upon the records of the land office are a technical violation of the statute, and it is a situation which should be cleared up. In my estimation it has not been the intention of the people in the field nor in Alaska to put them in hostility to the laws, but they have been in a position where they could not by virtue of the circumstances accommodate themselves to the laws, and with this last provision they could transmute their present entries into the form suggested by this bill and those new entries would be treated as primary entries. In other words, it would be an abandonment of the old conditions which have made a great deal of difficulty in the matter of the disposition of the land in many instances.

The CHAIRMAN. May I call your attention to section 5, which provides for the entry of the surface of lands which may contain coal?

Mr. BALLINGER. That provides for the entry under any form known to the public-land laws that is not in conflict with the rights that may exist in the sale of the deposit or the amount of surface that may be necessary.

Mr. SMITH, of California. As these lands have no agricultural or timber value, why not change that feature and let the title to the surface remain in the United States, so that there may not be any conflict between the coal miner and the surface holder?

Mr. BALLINGER. So far as Alaska is concerned, I do not know of any instance where the Government would benefit by the reservation of the surface.

Mr. SMITH, of California. I can readily foresee conflicts between the owner of the surface and the coal miner. The coal miner might want a new road or might want to do something which would very much irritate the owner of the surface, and it seems to me from your statement that it would be better to withdraw the surface from entry.

Mr. BALLINGER. I have no personal knowledge of coal areas in that respect, but I am strongly of the belief that the retention of the surface would be of no beneficial use.

Mr. SMITH, of California. It would not benefit the United States?

Mr. BALLINGER. That is what I mean.

Mr. SMITH, of California. But it would prevent conflict between the dual owners of the land. After the coal was mined out if we could dispose of the land, we could do so.

The CHAIRMAN. You have no definite knowledge of the existence of any multifarious minerals on such land?

Mr. BALLINGER. In Alaska, I am reliably informed, there are in some instances placer locations upon lands known to contain workable coal.

Mr. SMITH, of Arizona. How could you possibly do that; how could anybody go in and work the separate metals and divide them up?

Mr. BALLINGER. We divide the placer and the lodes.

Mr. SMITH, of Arizona. I am familiar with that, but nobody has ever seen it done.

The CHAIRMAN. That is a theory of law which is largely a fiction. However, if we attempt to separate mineral which might be discovered subsequent to the coal purchase and allow that to be entered under the mining laws we might be granting one man the mineral for nothing while we charged another man \$10 for the coal. It seems to me that even though there might be some small placers not known at coal purchase the Government is not losing anything if they pass with the coal. However, this would be true in Alaska, as elsewhere, unless some provision were made to the contrary; if known placers of value existed on any of this land they would be entryable under the placer acts in any event and not under the coal laws.

Mr. BALLINGER. Yes, sir.

The CHAIRMAN. And that in itself would protect the placers if they are known to exist.

Mr. BALLINGER. If you sold the lands under the present law?

The CHAIRMAN. If we sold them with the present requirement of proof of nonmineral character, we unquestionably would. If any known placers existed they could not pass under those conditions, provided the placers were proven of value.

Mr. BALLINGER. That is true. The present law has this exception in it, that coal lands may be disposed of in the way specified by the act, and that the classification of the lands as coal lands takes precedence over any other character that the land may possess except where it contains gold, silver, or copper, and in such a case I apprehend that the ruling would be if they contain workable deposits of gold, silver, or copper, that they would cease to be entryable as coal lands.

The CHAIRMAN. Then they would have to pass under the mineral law?

Mr. BALLINGER. Yes, sir.

The CHAIRMAN. The mineral claimant would get the land for \$5 per acre or he might work the placer out without making payment at all, which is often done.

Mr. SMITH, of Arizona. The coal entryman would get all the coal under the surface?

The CHAIRMAN. Yes; it seems to me from the standpoint of the Government that we would get more out of it, if it is a matter of cash that actuates this legislation, by allowing the surface to go with the coal deposit rather than to grant the surface to another party practically free, and under the conditions suggested by the gentleman from California, we might bring about a very serious conflict; the claimant of the surface might simply use his claim for the purpose of black-mailing the miner.

Mr. BALLINGER. The reserve of the surface except in so far as an easement should be granted with the sale of the deposit was to reach largely the areas that are agricultural and that might have coal deposits under them.

Mr. SMITH, of California. It was with that in view that I suggested that we frame this law to meet the Alaskan situation.

Mr. BALLINGER. I understand your point exactly. My understanding is that these lands so far as the known coal deposits are concerned are not agricultural lands.

Mr. SMITH, of California. Let us not, then, dispose of the surface, and thereby not inject the possible element of confusion.

Mr. BALLINGER. This deposit at Katalla is right at the foot of the mountains and Controller Bay, and there are no agricultural lands in that vicinity, as I understand it. In the Matanuska district, over here [indicating], it is a rough and broken country, and there are no probable agricultural possibilities.

Mr. SMITH, of California. Then I think we had better strike out section 5 and not dispose of the surface at all.

Mr. SMITH, of Arizona. Why would it not be better for the development of the country to limit the amount of coal holdings to a reasonable amount to any one person or corporation and put a prohibition on the further holding by any one person or corporation? Why would not that prevent a monopoly of these coal lands and work much easier than the proposition laid down in the bill?

Mr. BALLINGER. That is substantially getting at the same result.

Mr. SMITH, of Arizona. But you would leave the developer so much freer; the holder so much more secure.

Mr. BALLINGER. I am perfectly in accord with any theory that will get the results that are sought to prevent monopoly in coal, enforce the development, and give the Government an opportunity to get coal for its Navy and for other public purposes at a reasonable price. When that can be accomplished that is all the Government should be looking for, in my estimation.

The CHAIRMAN. It is true, however, Mr. Commissioner, that it is almost impossible to follow a title with an entailed condition.

Mr. BALLINGER. Yes, sir; I am inclined to think that this payment is much better for us and one which would check and follow the title, for various reasons. First, that it is impossible for us to determine

what areas might be required for a single operation in a given case. If we were going to limit the area in a single ownership we might put it so small that ultimately it would very largely hamper operations. On the other hand, the provisions of section 4, the latter part of section 4 it seems to me, meets that condition by providing that the title shall always be held subject to proceedings that may be instituted under given conditions.

Mr. SMITH, of California. You can not prevent individuals from forming corporations and acquiring the lands?

Mr. BALLINGER. That has been the difficulty of administering the present law; it has been impossible to uncover the workings of the entrymen.

Mr. SMITH, of California. Could you prevent the same members from forming another corporation and taking more land?

Mr. BALLINGER. Unquestionably; either directly or indirectly.

Mr. SMITH, of California. That would require that no one person should be a stockholder in two corporations and that would make it necessary to follow up each share of stock; which would be very laborious?

Mr. BALLINGER. As to the area involved, I am satisfied, as I stated before, that the Government should grant a liberal area of 4 or even 5 or 6 sections, enough to warrant the investment of the amount of capital necessary to make the development.

Mr. SMITH, of California. The central idea of this bill is to get a certain amount mined?

Mr. BALLINGER. Yes, sir; to make them produce. I have some suggestions for amending the bill in some slight particulars which I will file with the committee.

The suggestions referred to are as follows:

It is suggested that the bill should be amended by adding to line 4, page 2, after the words "price of," the words "not less than," for the reason that it would appear that valuable deposits of anthracite coal, or lands containing large quantities of semibituminous coal, should not be disposed of at the same rate per acre as the lower grades of bituminous coal and lignites. By the amendment suggested the Department of the Interior will be enabled to classify and dispose of the coal deposits at prices commensurate with their ascertained value. Amendment of line 3, page 4, insert "completion of the entry by final proof and payment" instead of "issuance of such patent."

Line 3, page 6, should be amended by inserting after the word "other" the word "qualified," so that assignments of existing coal locations may not be made to and title acquired by persons, associations, or corporations who have already exhausted their rights under the existing coal-land laws.

Thereupon the committee adjourned.

STATEMENT OF DONALD A. MACKENZIE.

In response to your request that I make a statement respecting conditions affecting coal locators or entrymen in the district of Alaska, I submit the following:

Long before any attempt was made by Congress to extend the coal-land laws to the district of Alaska a number of persons went into

what is now known as the Bering coal fields, near Controller Bay, and prospected for coal and oil. They discovered some splendid deposits of coal. Each of them located a coal claim of 160 acres and later associated themselves together and combined their claims by putting them into the holdings of the company. They went to work in good faith to open up and develop their properties, and by the time this field was first brought to the attention of the United States Government they had so advanced their operations that they were able to show the representatives of the Geological Survey many veins they had exposed, and the Government, in this way, received the benefit of their efforts and expenditures. Other persons followed them into the coal fields and the land was soon largely taken up in the same manner by small associations, the individual members of which would locate contiguous tracts. This combination of interests was the result of necessity, as this is a very expensive country to operate in. The expense of getting provisions and tools from the salt water into the interior is almost prohibitive and the operations that have been carried on up to the present time have cost the locators a far greater sum than it cost the early locators in the States.

By the act of June 6, 1900, Congress attempted to extend the coal-land laws to the district of Alaska, but the act made no provision for a survey, and as the public surveys have not even yet been extended to Alaska it was of no force or effect. In 1904 another act was passed, which provided for the making of a survey at the expense of the locator, a burden imposed upon the locators in Alaska that is not borne by entry men in the States. The cost of survey alone is considerable, as the country is very rough and mountainous, and in the region of the coal fields there is considerable rainfall. During the past year there was one month during which it was not possible to prosecute such outdoor work for more than ten days. To send in a surveying party to make a survey of a single claim the cost would be practically prohibitive. It is, therefore, essential that the entry-men combine and let a contract for the survey of a large number of claims and all share proportionately in the expense. It costs as high as \$800 to survey some of the claims.

After the passage of the act of 1904 the persons holding claims relocated them under the new law. But under the rules and regulations of the Land Office they were not permitted to form companies or corporations before receiving patents, and at the present time some patents are being held up under the law as thus interpreted by the Interior Department. To my knowledge there has been no fraud, nor attempted fraud of any kind discovered. The lands were entered as coal lands, and the highest price the Government receives for public lands will be paid for them. There is no instance where any person has attempted to take up coal land as a homestead or with scrip or in any other manner than under the coal-land law, and the only violation of the law has been a technical one in the forming of companies, and I believe that there are less than forty claims in the Bering field now held by companies in the manner above referred to.

Everything has been open and aboveboard. It may be that the locators were somewhat careless in not ascertaining the provisions of the new rules and regulations, but it has been the custom of Alaskans,

and I believe this custom has prevailed throughout the West generally, to feel that when a person found anything of value on the public domain he could appropriate it and rest secure that his right thereto would be recognized and respected.

There is even more excuse for an Alaskan to make such a mistake, as the country had been for a long time practically without law. The people had been a law unto themselves and had made rules and regulations to govern their mining operations. The idea had grown up and developed that they had a right to do this and that the United States would eventually pass laws recognizing the rights thus initiated. In view of these facts we feel that it would be but a simple act of justice for Congress to condone technical violations of the law due to honest mistake and so revise the law that we can perfect our titles to these lands and proceed in a businesslike way to open up the coal mines so that the people of the Pacific coast and our Navy can purchase American coal of as high a grade and for less money than they are now paying for Welsh coal, which is about equal in heat-producing qualities. I have been informed that the Government will pay \$1,800,000 for coal on the Pacific coast this year, also that most of this is foreign. This money should go to Alaskans, and we would be in position now to furnish this coal had the laws been so framed as to permit the coal to be mined.

The law as it now exists permits every individual who cares to enter coal land to take 160 acres in a single body. One tract of 160 acres in Alaska is practically worthless, and in order to work the properties profitably several claims must be worked together. It has been estimated that it will cost all the way from \$200,000 to \$500,000 to properly open up and work a coal mine on an economical basis. To justify such an expenditure each location should contain from 6 to 8 sections. To illustrate the impracticability of operating a single claim of 160 acres in this country, let us say that A has a claim on the creek level where he can obtain an outlet to salt water; B has a claim farther up the mountain, and C, D, and E are still farther up. B, C, D, and E are compelled to come over the property of A, so that their claims are absolutely worthless unless they can co-operate with him. The chances are that one tunnel, which may be a very expensive operation, will develop all five claims. It would, of course, be a difficult matter to enact a law that will exactly fit all cases or to prescribe the exact amount that should be included in a mining property. In some instances probably as much as 5,000 acres should be worked as a single claim to produce the most economical results, while in other cases a less amount might be worked profitably.

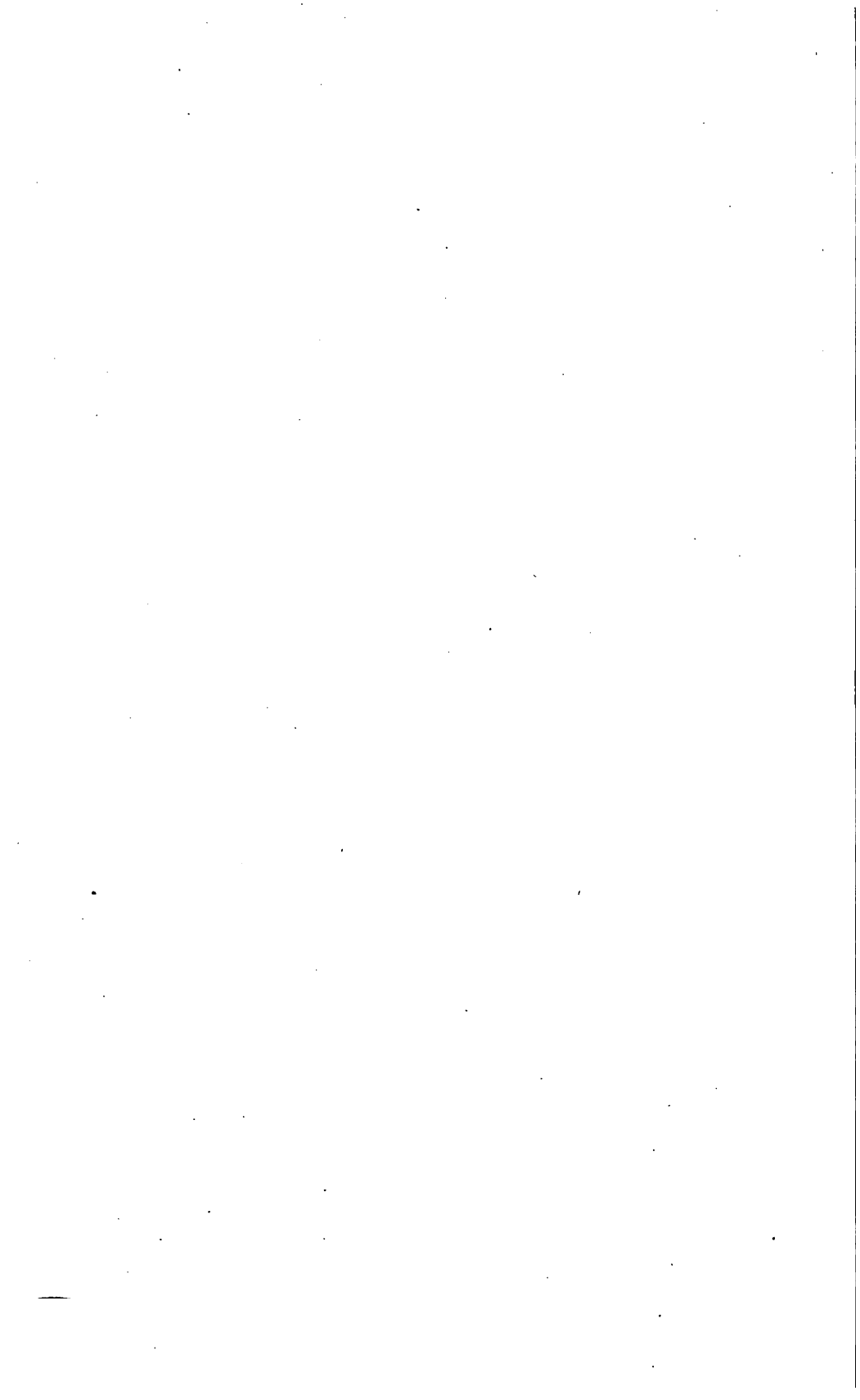
We feel that some legislation is needed and that it is incumbent on the Government to deal fairly with us and protect the pioneers in the rights they have initiated and are now asserting. We believe it is the desire of the Land Department to do this if the law is so revised as to permit. There have been some technical violations of the rules and regulations of the Land Department by many of these claimants, but such violations were the result of honest mistake, and we trust Congress will take into consideration the difficulties under which they labored and also remember that the miners of the North are many miles from Washington and that few of them are versed in the law. We think such legislation should be enacted as will permit us to open up these coal claims and have our product on the market

for the American fleet now in the Pacific during the year 1908. If Congress will do this I believe it is a safe prediction that it will add 50,000 to the permanent population of Alaska in the next five or six years, for the placing of the coal mines in operation will be an inducement to the development of the copper and other minerals of the interior and to the building of transportation lines. Railroads are very timid about investing capital to build into the coal fields until this all-important question of title to the land is settled. There is plenty of capital ready and willing to carry on this work and several lines have already been projected, but it is doubtful if anything more is done by them except to hold their positions until this matter is adjusted.

There is no work that will go forward more rapidly and none that will add so quickly to the increased wealth of the country as the development of the coal of Alaska and this work will be pushed vigorously if Congress will encourage it by suitable legislation.

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